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USA v. Smith

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 05-1774

UNITED STATES OF AMERICA

v.

JEROME SMITH, a/k/a PAUL KELLY,

Jerome Smith,

Appellant

On Appeal from the United States District Court
for the Eastern District Of Pennsylvania
D.C. No. 03-cr-00683
District Judge: Hon. Timothy J. Savage

Submitted Under Third Circuit LAR 34.1(a)
March 9, 2006

Before: ROTH and ALDISERT, Circuit Judges, and RODRIGUEZ, * District Judge

(Filed: May 26, 2006)

JUDGMENT ORDER

* The Honorable Joseph H. Rodriguez, Senior District Judge, United States District Court for the District of New Jersey, sitting by designation.

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted under Third Circuit LAR 34.1(a) on March 9, 2006, and

IT APPEARING that Appellant Jerome Smith challenges the denial of a motion to suppress evidence on the basis that the officers lacked reasonable suspicion to search him; and

IT APPEARING that Smith is the co-defendant of Kareem Brown, the appellant in *United States v. Brown*, — F.3d —, Slip Op. No. 05-1723 (3d Cir. May 19, 2006) (Judges Barry, Ambro and Aldisert), in which this Court, per Judge Ambro, vacated Brown's conviction after determining that police did not have reasonable suspicion to stop Brown and that he was seized before any alleged resistance occurred; and

IT APPEARING that Smith and Brown were together when apprehended and that the only factual variance between the circumstances surrounding the seizure of Smith and those surrounding the seizure of Brown is that Smith fled from police moments before Brown began allegedly resisting; and

IT APPEARING that this distinction is immaterial because Smith had already submitted to a show of police authority by engaging in a brief discussion, putting down his coffee, walking over to the police car and starting to place his hands on the officers' car, *see id* at *15-16; *see also United States v. Coggins*, 986 F.2d 651, 654 (3d Cir. 1993) (holding that defendant submitted to a show of authority where he obeyed agent's command to "sit down," even though defendant subsequently fled); and

UPON CONSIDERATION of all facts and legal contentions, there is no other ground distinguishing this case from *Brown*, nor meriting further discussion; accordingly,

IT IS **ORDERED** and **ADJUDGED** that the judgment of the District Court dated July 20, 2004 be and is hereby **REVERSED** and the conviction is **VACATED**.

The mandate of this Court shall issue forthwith.

BY THE COURT,
/s/ Ruggero J. Aldisert
Circuit Judge